

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Christopher Anthony Roller, Plaintiff, v. The James Randi Educational Foundation, et al, Defendant.	Case No.: 07-01296 (JRT/FLN) DEFENDANT’S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS ORAL ARGUMENT WAIVED
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INTRODUCTION

Plaintiff Christopher Roller (“Roller”) has purported to commence an action for the infringement of an alleged patent he claims to hold for “godly powers.” He asserted this baseless claim against the law firm of Maslon Edelman Borman & Brand, LLP (the “Maslon Firm”) by a Supplemental Complaint in the above-action, but bearing a different caption. But Plaintiff has never served the Maslon Firm with that action according to the rules of procedure. More problematic, Plaintiff’s action against the Maslon Firm fails to state a claim for which relief can be granted. Plaintiff’s action should be dismissed with prejudice pursuant to FED. R. CIV. P. 12(b)(6), or alternatively under FED. R. CIV. P. 12(b)(5) for insufficiency of service.

FACTUAL BACKGROUND

Plaintiff Christopher Roller is an individual residing in the State of Minnesota and is a frequent *pro se* litigant in the federal court system.¹ The Maslon Firm is a

¹ Over the past several years, Plaintiff has burdened this Court with the following actions of which Defendant is aware:

Minneapolis law firm that has represented (and continues to represent) David Copperfield Disappearing, Inc. (“David Copperfield”) in two actions that Plaintiff has filed in this Court: *Christopher Roller v. David Copperfield’s Disappearing, Inc.*, 05-CV-00446 (FLN/JRT), and *Christopher Roller v. David Copperfield’s Disappearing, Inc.*, 07-CV-1182 (JEG/JNE).

In the first action, this Court dismissed Plaintiff’s claims that David Copperfield had usurped “godly powers” from Plaintiff in violation of Minnesota labor statutes. (*See* Report & Recommendation dated October 13, 2005, and Order dated January 20, 2006.) Plaintiff then appealed to the U.S. Court of Appeals for the Eighth Circuit, which by order dated May 25, 2006 summarily dismissed his appeal without requiring briefing or oral argument. (U.S. Ct. App. (8th Cir.) J. dated May 25, 2006.)

In the second suit, Maslon is defending David Copperfield against claims of patent infringement again relating to Plaintiff’s alleged “godly powers.” This time Plaintiff

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- Christopher Roller v. Central Intelligence Agency (07-01298) (Plaintiff sued CIA claiming it has ruined his life by failing to inform others that he is god);
 - Christopher Roller v. Angel Productions, Inc. (07-01297) (Plaintiff sued magician Criss Angel for stealing Plaintiff’s godly powers);
 - Christopher Roller v. Department of Veterans Affairs Minneapolis Medical Center (06-00529) (Plaintiff sued Veterans Affairs for \$1 billion for calling him mentally ill and for aiding and abetting the mafia in damaging Plaintiff’s ability to perform his job as President of the United States);
 - Christopher Roller v. George Bush Administration et al. (05-2177) (Plaintiff sued President Bush and others for conspiracy against a godly entity and conspiracy to plan the attacks of September 11, 2001); and
 - Christopher Roller v. Bossa Entertainment Corp. and Magician David Blaine (05-01112) (Plaintiff sued magician David Blaine for usurpation of godly powers).

asserts that he has a patent on “godly powers” and that David Copperfield is infringing on that patent. Because Plaintiff does not hold a patent—on “godly powers” or on anything else—Copperfield has asked this Court to dismiss the second action. That motion is pending.

Plaintiff initiated the above-captioned lawsuit on or about February 23, 2007 against defendant The James Randi Educational Foundation (“Randi Foundation”). Defendant Randi responded to the initial complaint by filing a motion to dismiss on March 20, 2007. The Maslon Firm was not a party to the initial lawsuit. Notwithstanding Maslon’s lack of involvement in the underlying facts of the lawsuit, on May 23, 2007, the Maslon Firm received an envelope in the United States mail that contained a Summons dated May 18, 2007, apparently issued under the Seal of the Clerk of this Court, as well as two purported pleadings, one entitled “Complaint Supplemental” and one “Amended Complaint” both also dated May 18, 2007. (*See* Affidavit of David F. Herr (“Herr Aff.”) Exs. A & B.) The Complaint Supplemental purports to name Maslon as the sole defendant in the pending action against Defendant Randi, based on an allegation that the Maslon Law Firm has infringed on Plaintiff’s patent for “godly powers.” (*Id.*)

Plaintiff specifically asserts that “I would like to amend the complaint, mass class action, to add more defendants.” (Herr Aff. Ex. A at 1.) Plaintiff provides no explanation or basis for using the phrase “mass class action.” (Plaintiff does not mention, or try to plead, any of the mandatory prerequisites for a class action set forth in Rule 23.) Plaintiff’s claim against Maslon is spelled out in the “Complaint Supplemental” where

Plaintiff alleges that because “Employees at Maslon Edelman Borman & Brand have godly powers... [and] Employees at [Maslon] conduct some of their business by issuing magic commands ... I’m suing Maslon Edelman Borman & Brand for patent infringement.” (Herr Aff. Ex. B.) Plaintiff goes on to request “past royalties” for Maslon’s infringing use of his “godly powers.” (*Id.*)

On June 5, 2007, this Court issued a Report and Recommendation dismissing Defendant Randi from this action for lack of personal jurisdiction. That Report and Recommendation did not mention Maslon. As such, the Maslon Firm brings the present motion to ask this Court to enter an order dismissing all claims asserted by Plaintiff against it on the ground that they fail to state a claim. Alternatively, because Plaintiff has never served this action on Maslon, this Court should dismiss this action for insufficiency of service.

ARGUMENT

A. Plaintiff’s Complaint Fails to State a Claim.

A claim is subject to dismissal under FED. R. CIV. P. 12(b)(6) when “plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45 (1957). A claim of patent infringement requires that the claimant hold a valid patent. Plaintiff here, of course, does not (and indeed could not) hold a valid patent for “godly powers.” Plaintiff acknowledges in his Amended Complaint that this critical element is missing. (Herr Aff. Ex. A p. 2.) Specifically,

Plaintiff states, “People like to me fun of the fact that I don’t have a patent. This is true, but I have a pseudo-patent, a provisional patent, with provisional rights.” (*Id.*)²

Conceding he has no real patent, Plaintiff apparently believes that he has a “pseudo-patent” or a “provisional patent” on “godly powers.” Setting aside the obvious problems with the patentability of the subject matter, there is no such thing as a “pseudo patent” or a “provisional patent.” Plaintiff (apparently) misreads the patent statute to treat patent applications the same as issued patents and further believes that “provisional rights” arise once a patent application is published.³ He is wrong.

The use of the term “patent” in the statute refers only to *issued* patents, not published patent applications. Such a reading is consistent with the use of the word in the United States Code and by the United States Patent and Trademark Office (USPTO). *See e.g.*, 35 U.S.C. §§ 111, 122, 131, 151 (detailing the procedure through which an invention

² This Court should simply dismiss both the Complaint Supplemental and Amended Complaint for failure to state a claim. The injunction against filing further frivolous pleadings contained in Magistrate Judge Noel’s June 5, 2007, Report and Recommendations should then be applied to any further efforts of Mr. Roller to assert claims such as these.

³ In his Amended Complaint, Plaintiff cites 35 U.S.C. § 154(d)(1), which states in relevant part:

(d) PROVISIONAL RIGHTS –

(1) IN GENERAL. – In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent under section 122(b) . . . and ending on the date the patent is issued –
(emphasis added)

receives a patent)⁴; USPTO Patent Full-Text and Full-Page Image Databases, <http://www.uspto.gov/patft/index.html> (hosting two search engines, one for “Issued Patents” and the other for “Published Applications”). The statute is clear that a *patent* and a *published patent application* are two distinct items. *Id.*

Plaintiff also confuses the ripeness of his claim. “[Provisional rights] do[] not mature until a patent issues” *Plastic Recovery Technologies, Inc. v. Container Components, Inc.*, 2004 WL 2583951, at *1 (N.D. Ill. Nov. 12, 2004). The plain language of the statute reveals that, although a person with a published patent application can recover damages based on another’s use of the invention post-publication, that right only arises if a patent *has issued*.⁵

Publication of a patent application is simply not the same as being awarded a patent by the U.S. PTO. Publication of applications is done automatically as a matter of

⁴ The procedure begins with a patent application that is published eighteen months after it is submitted. 35 U.S.C. §§ 111, 122. Once the application is reviewed, a patent will either be denied or will be issued. 35 U.S.C. § 131, 151. At all points prior to the issuance of a patent, the Code refers to patent applications and applications for patents, suggesting that the applicant is merely asking for a patent at that stage.

⁵ Plaintiff quotes a passage from the USPTO website to argue that provisional rights arise upon publication. (Herr Aff. Ex. A. p. 1). Had Plaintiff continued reading, however, he would have had to admit that his interpretation is flawed. The sentence following the excerpt used by Plaintiff states: “These rights provide a patentee with the opportunity to obtain a reasonable royalty from a third party that infringes a published application claim provided actual notice is given to the third party by applicant, and a patent issues from the application.” (<http://www.uspto.gov/web/offices/pac/doc/general/index.html>, Click on “Publication of Patent Applications”).

course. 35 U.S.C. § 122(b)(1). Issuance of a patent occurs after examination and determination that the applicant meets specified statutory criteria.

Plaintiff attempts to bring an action for patent infringement without having a patent. Plaintiff has failed to state a claim on which relief can be granted, and the claim must be dismissed in its entirety.

B. Alternatively, Plaintiff Never Served The Maslon Law Firm.

In addition to Plaintiff's failure to state a claim, the Maslon Firm has never been served the summons and complaint according to the rules of procedure. Rule 4(h) sets forth the requirements for serving a limited partnership such as the Maslon Firm. *See* Fed. R. Civ. P. 4. Sending the summons and complaint by U.S. mail only satisfies that rule if it is accompanied by a request for waiver of service (and defendant agrees to waive service). Fed. R. Civ. P. 4(d)(2). Plaintiff sent the documents to Maslon by U.S. mail without a request for waiver of service. (Herr Aff. ¶2.) Maslon has not agreed to waive service. (*Id.*) This is not proper service according to the rules. As such, and as an alternative ground, this action should be dismissed under Rule 12(b)(5) for insufficiency of service.

CONCLUSION

Plaintiff has a history of bringing meritless lawsuits. The present two complaints purportedly served on the Maslon Firm are just additional examples of this pattern. No valid claim exists (or could exist) for infringement of a patent on "godly powers." Plaintiff's Complaint Supplemental and Amended Complaint should both be dismissed

with prejudice pursuant to Fed. R. Civ. P. 12(b)(6). Alternatively, dismissal is warranted for ineffective service under Fed. R. Civ. P. 12(b)(5).

Dated: June 12, 2007

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<p>Christopher Anthony Roller, Plaintiff, v. The James Randi Educational Foundation, et al, Defendant.</p>	<p>Case No.: 07-01296 (JRT/FLN)</p> <p>LR 7.1(c) WORD COUNT COMPLIANCE CERTIFICATE FOR DEFENDANT MASLON EDELMAN BORMAN & BRAND, LLP'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS</p> <p>ORAL ARGUMENT WAIVED</p>
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I, David F. Herr, certify that Purported Defendant's Memorandum in Support of its Motion to Dismiss complies with Local Rules 7.1(c) and 7.1(e).

I further certify that, in preparation of this memorandum, I used Microsoft® Office Word 2003, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

I further certify that the above-referenced memorandum contains 1,947 words.

Dated: June 12, 2007

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